

**Air Pollution Control Board**

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Air Pollution Control Officer

R. J. Sommerville

DATE: July 25, 1995

TO: Air Pollution Control Board

SUBJECT: Change in the Adoption Procedure for California Air Toxic Control Measures and National Emissions Standards for Hazardous Air Pollutants.

SUMMARY:

The state Health and Safety Code requires the California Air Resources Board (ARB) to identify toxic (hazardous) air pollutants and adopt Air Toxic Control Measures (ATCM's) to reduce them. Local air districts are then required to implement ATCM's or adopt and implement local regulations at least as stringent.

National Emissions Standards for Hazardous Air Pollutants (NESHAP's) are promulgated by the Environmental Protection Agency (EPA) and apply throughout the country. The EPA Section 105 Grant requires the District to adopt any new or amended NESHAP's regulation or take other action to enable implementing the NESHAP within 12 months of EPA promulgation.

In order to maintain a consistent and comprehensive public review process, the Board currently adopts ATCM's as local rules in Regulation XII and NESHAP's as separate Subparts in Regulation XI of the District Rules and Regulations, after the established notice and workshop process. Following adoption of a NESHAP, the District requests EPA delegation of authority.

Due to the mandates of the 1990 Clean Air Act Amendments, over the next few years the District estimates at least 16 (likely substantially more) new and modified NESHAP's will have to be implemented. Because the state Health and Safety Code specifies any NESHAP adopted by EPA is automatically a state ATCM unless the ARB adopts an alternative, air districts must directly implement all new ATCM's or NESHAP's, or formally adopt and implement them as separate local rules. Restructuring an ATCM or NESHAP into a District rule format is a lengthy and resource intensive process. As part of the continuous improvement effort to reduce cycle time and avoid or reduce costs, including additional staff requirements, the District is proposing to directly implement new and amended ATCM's and NESHAP's without adopting them as local requirements. This concept is approved by ARB and EPA and is used by some air districts in California. It will avoid the need to hire four new Associate Engineers (\$239,416 annually).

While these changes will decrease cycle times and avoid cost, there will be minimal impact on the current public review process. The process will be maintained with two minor modifications.

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- The ATCM's and NESHAP's would not be restructured into a local rule or Subpart. Instead, the published state ATCM or federal NESHAP will be used in the review process.
- The Board will not adopt (or adopt by reference) a local rule or Subpart unless the District, businesses or the public has a compelling interest to do so.

As a result, District requirements will become slightly more complex in that new and amended ATCM's and NESHAP's will no longer appear in Regulations XI and XII respectively. Instead, they will be included in an Appendix to District Rules and Regulations.

Also as part of the District's continuous improvement process, the District is separately proposing to revise procedures to implement federal Standards of Performance for New Stationary Sources (NSPS). The current procedure requiring Board adoption of the full regulation as a local Subpart would be replaced by one allowing the Board to adopt a new or amended NSPS by reference. Adoption of NSPS by reference is necessary because there is no authority in state law, as there is for ATCM's and NESHAP's, to implement NSPS directly.

Issue

Should the Board authorize implementing state Air Toxic Control Measures (ATCM's) and federal National Emissions Standards for Hazardous Air Pollutants (NESHAP's) without formal adoption, as authorized by the state Health and Safety Code.

Recommendation

AIR POLLUTION CONTROL OFFICER:

Direct the Air Pollution Control Officer to implement new and modified ATCM's and NESHAP's without formally adopting them, as authorized by the state Health and Safety Code.

Advisory Statement

The Air Pollution Control Advisory Committee recommended approving the new procedure for implementing ATCM's and NESHAP's at its May 25, 1995 meeting.

Fiscal Impact

Changing the procedure for adopting state ATCM's and federal NESHAP's will avoid future costs (4 Associate Engineers, \$239,416 annually) associated with developing local rules to implement new or modified ATCM's and NESHAP's.

Alternatives

Not adopt the recommendation. This would require the District to continue the current process of developing and adopting state ATCM's and federal NESHAP's. An annual cost avoidance of four staff years (\$239,416) will not be realized and four staff years would have to be added

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to adopt ATCM's and NESHAP's using the current process or risk missing EPA Grant deadlines and possibly losing part of the annual 105 Grant which is contingent upon timely adoption of new and amended NESHAP's Subparts.

BACKGROUND:

The state Health and Safety Code requires the ARB to identify toxic (hazardous) air pollutants and adopt Air Toxic Control Measures (ATCM's) to reduce emissions. Within 120 days after adopting or implementing an ATCM by ARB, local districts must either implement the ATCM directly or propose a regulation at least as stringent as the ATCM. Currently, the District adopted its own version of the ATCM's as local rules in Regulation XII of the District Rules and Regulations.

Section 112 of the Federal Clean Air Act requires EPA to promulgate National Emissions Standards for Hazardous Air Pollutants (NESHAP's) that apply throughout the country. EPA (Section 105 Grant) requires the District to adopt or take action to otherwise implement any new or amended NESHAP's within 12 months of promulgation by EPA. Local districts can request delegation of authority to implement applicable NESHAP's from EPA. To receive delegation, a local Subpart must be adopted incorporating the NESHAP's requirements or implementation of the federal NESHAP's must be authorized in some other manner acceptable to EPA.

To avoid the necessity, related expense and cycle time for local businesses to obtain an NESHAP permit from EPA, the District accepted EPA delegation and assumed responsibility for the NESHAP program in November, 1976.

The federal Act identified 189 Hazardous Air Pollutants and required EPA to develop NESHAP's reflecting Maximum Achievable Control Technology to reduce their emissions. EPA must publish over 150 new NESHAP's by the year 2001. The state Health and Safety Code specifies that any NESHAP regulation adopted by EPA under Section 112 of the Federal Clean Air Act is also an ATCM unless the ARB adopts an alternative ATCM. All ATCM's, including applicable NESHAP's adopted by EPA, must be locally adopted and implemented or implemented directly by local air districts.

In order to maintain a consistent and comprehensive public review process, the Board currently adopts a District regulation reflecting new and modified NESHAP and ATCM requirements into Regulation XI and XII, respectively, of the District's Rules and Regulations after the established notice and workshop process. Currently, Regulation XI has six Subparts.

The proposed change will maintain the District's current participative review process with two minor modifications:

- The ATCM's and NESHAP's would not be restructured into a local rule or Subpart. Instead, the published state ATCM or federal NESHAP will be used in the review process.
- The Board will not adopt (or adopt by reference) a local rule or Subpart unless the District, businesses or the public has a compelling interest to do so. In such case, the District will propose adoption of a local regulation using the current rule adoption process.

While these changes will decrease cycle times and avoid cost, there will be minimal impact on the public review process. Interested parties will still be fully informed of specific changes in a workshop notice, a workshop will be held and a workshop report prepared and distributed to

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participants. All newly promulgated or amended state ATCM's and federal NESHAP's for hazardous air pollutants including those currently in Regulations XI and XII will be included in an Appendix to the District Rules and Regulations. Copies will also be provided to affected sources on request and be available for review in the District library.

A public workshop discussing the proposed changes to the ATCM and NESHAP adoption process was held on March 30, 1995. The workshop report is attached.

Concurrence:

Respectfully submitted,

DAVID E. JANSSEN
Chief Administrative Officer



R. J. SOMMERVILLE
Air Pollution Control Officer

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COUNTY COUNSEL APPROVAL: Form and Legality ☒ Yes ☐ N/A
☐ Standard Form ☐ Ordinance ☐ Resolution

CHIEF FINANCIAL OFFICER/AUDITOR REVIEW: ☒ N/A ☐ Yes
4 VOTES: ☐ Yes ☒ No

CONTRACT REVIEW PANEL: ☐ Approved _____ ☒ N/A

CONTRACT NUMBER(S): N/A

PREVIOUS RELEVANT BOARD ACTION: N/A

BOARD POLICIES APPLICABLE: N/A

CITIZEN COMMITTEE STATEMENT: The Air Pollution Control District Advisory Committee recommended approving the new procedure for implementing ATCM's and NESHAP's at its May 25, 1995 meeting.

CONCURRENCES: N/A

ORIGINATING DEPARTMENT: Air Pollution Control District County of San Diego

CONTACT PERSON: Richard J. Smith, Deputy Director 750-3303 MS: 0-176

R.J. SOMMERVILLE
DEPARTMENT AUTHORIZED REPRESENTATIVE

JULY 25, 1995
MEETING DATE